

AMENDED IN ASSEMBLY MARCH 21, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 507**

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**Introduced by Assembly Member Hayashi**

February 15, 2011

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An act to amend Section 4301 of the Business and Professions Code, and to amend Sections 124960 and 124961 of, and to repeal Section 11453 of, the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

AB 507, as amended, Hayashi. Pain management.

(1) Existing law, the Pharmacy Law, provides for the licensure and regulation of pharmacists and pharmacy technicians by the California State Board of Pharmacy.

Existing law requires the board to take action against any holder of a license who is guilty of unprofessional conduct, as defined, including, but not limited to, the clearly excessive furnishing of controlled substances in violation of prescribed statutory provisions relating to the prescription of a controlled substance.

This bill would exempt from this provision any holder of a license who has a medical basis for furnishing dangerous drugs or prescription controlled substances, including for pain or a condition causing pain.

(2) Existing law authorizes the Department of Justice to employ a physician to interview and examine any patient in connection with the prescription possession or use of a controlled substance, requires the patient to submit to the interview and examination, and authorizes the physician to testify in prescribed administrative proceedings.

This bill would repeal that provision.

(3) Existing law, the Medical Practice Act, provides for the licensing and regulation of physicians and surgeons by the Medical Board of California, and the violation of specified provisions of the act is a crime. Existing law authorizes a physician and surgeon to prescribe for, or dispense or administer to, a person under his or her treatment for a medical condition, drugs or prescription controlled substances for the treatment of pain or a condition causing pain, including, but not limited to, intractable pain.

This bill would conform findings and declarations and other references to severe chronic intractable pain and to the California Intractable Pain Treatment Act.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 4301 of the Business and Professions  
2     Code is amended to read:  
3     4301. The board shall take action against any holder of a license  
4     who is guilty of unprofessional conduct or whose license has been  
5     procured by fraud or misrepresentation or issued by mistake.  
6     Unprofessional conduct shall include, but is not limited to, any of  
7     the following:  
8     (a) Gross immorality.  
9     (b) Incompetence.  
10    (c) Gross negligence.  
11    (d) The clearly excessive furnishing of controlled substances  
12    in violation of subdivision (a) of Section 11153 of the Health and  
13    Safety Code. Any holder of a license who has a medical basis for  
14    furnishing dangerous drugs or prescription controlled substances,  
15    including for pain or a condition causing pain, shall not be subject  
16    to disciplinary action pursuant to this section.  
17    (e) The clearly excessive furnishing of controlled substances in  
18    violation of subdivision (a) of Section 11153.5 of the Health and  
19    Safety Code. Factors to be considered in determining whether the  
20    furnishing of controlled substances is clearly excessive shall  
21    include, but not be limited to, the amount of controlled substances  
22    furnished, the previous ordering pattern of the customer (including  
23    size and frequency of orders), the type and size of the customer,  
24    and where and to whom the customer distributes its product.

1 (f) The commission of any act involving moral turpitude,  
2 dishonesty, fraud, deceit, or corruption, whether the act is  
3 committed in the course of relations as a licensee or otherwise,  
4 and whether the act is a felony or misdemeanor or not.

5 (g) Knowingly making or signing any certificate or other  
6 document that falsely represents the existence or nonexistence of  
7 a state of facts.

8 (h) The administering to oneself, of any controlled substance,  
9 or the use of any dangerous drug or of alcoholic beverages to the  
10 extent or in a manner as to be dangerous or injurious to oneself,  
11 to a person holding a license under this chapter, or to any other  
12 person or to the public, or to the extent that the use impairs the  
13 ability of the person to conduct with safety to the public the practice  
14 authorized by the license.

15 (i) Except as otherwise authorized by law, knowingly selling,  
16 furnishing, giving away, or administering, or offering to sell,  
17 furnish, give away, or administer, any controlled substance to an  
18 addict.

19 (j) The violation of any of the statutes of this state, of any other  
20 state, or of the United States regulating controlled substances and  
21 dangerous drugs.

22 (k) The conviction of more than one misdemeanor or any felony  
23 involving the use, consumption, or self-administration of any  
24 dangerous drug or alcoholic beverage, or any combination of those  
25 substances.

26 (l) The conviction of a crime substantially related to the  
27 qualifications, functions, and duties of a licensee under this chapter.  
28 The record of conviction of a violation of Chapter 13 (commencing  
29 with Section 801) of Title 21 of the United States Code regulating  
30 controlled substances or of a violation of the statutes of this state  
31 regulating controlled substances or dangerous drugs shall be  
32 conclusive evidence of unprofessional conduct. In all other cases,  
33 the record of conviction shall be conclusive evidence only of the  
34 fact that the conviction occurred. The board may inquire into the  
35 circumstances surrounding the commission of the crime, in order  
36 to fix the degree of discipline or, in the case of a conviction not  
37 involving controlled substances or dangerous drugs, to determine  
38 if the conviction is of an offense substantially related to the  
39 qualifications, functions, and duties of a licensee under this chapter.  
40 A plea or verdict of guilty or a conviction following a plea of nolo

1    contendere is deemed to be a conviction within the meaning of  
2    this provision. The board may take action when the time for appeal  
3    has elapsed, or the judgment of conviction has been affirmed on  
4    appeal or when an order granting probation is made suspending  
5    the imposition of sentence, irrespective of a subsequent order under  
6    Section 1203.4 of the Penal Code allowing the person to withdraw  
7    his or her plea of guilty and to enter a plea of not guilty, or setting  
8    aside the verdict of guilty, or dismissing the accusation,  
9    information, or indictment.

10   (m) The cash compromise of a charge of violation of Chapter  
11   13 (commencing with Section 801) of Title 21 of the United States  
12   Code regulating controlled substances or of Chapter 7  
13   (commencing with Section 14000) of Part 3 of Division 9 of the  
14   Welfare and Institutions Code relating to the Medi-Cal program.  
15   The record of the compromise is conclusive evidence of  
16   unprofessional conduct.

17   (n) The revocation, suspension, or other discipline by another  
18   state of a license to practice pharmacy, operate a pharmacy, or do  
19   any other act for which a license is required by this chapter.

20   (o) Violating or attempting to violate, directly or indirectly, or  
21   assisting in or abetting the violation of or conspiring to violate any  
22   provision or term of this chapter or of the applicable federal and  
23   state laws and regulations governing pharmacy, including  
24   regulations established by the board or by any other state or federal  
25   regulatory agency.

26   (p) Actions or conduct that would have warranted denial of a  
27   license.

28   (q) Engaging in any conduct that subverts or attempts to subvert  
29   an investigation of the board.

30   (r) The selling, trading, transferring, or furnishing of drugs  
31   obtained pursuant to Section 256b of Title 42 of the United States  
32   Code to any person a licensee knows or reasonably should have  
33   known, not to be a patient of a covered entity, as defined in  
34   paragraph (4) of subsection (a) of Section 256b of Title 42 of the  
35   United States Code.

36   (s) The clearly excessive furnishing of dangerous drugs by a  
37   wholesaler to a pharmacy that primarily or solely dispenses  
38   prescription drugs to patients of long-term care facilities. Factors  
39   to be considered in determining whether the furnishing of  
40   dangerous drugs is clearly excessive shall include, but not be

1 limited to, the amount of dangerous drugs furnished to a pharmacy  
2 that primarily or solely dispenses prescription drugs to patients of  
3 long-term care facilities, the previous ordering pattern of the  
4 pharmacy, and the general patient population to whom the  
5 pharmacy distributes the dangerous drugs. That a wholesaler has  
6 established, and employs, a tracking system that complies with  
7 the requirements of subdivision (b) of Section 4164 shall be  
8 considered in determining whether there has been a violation of  
9 this subdivision. This provision shall not be interpreted to require  
10 a wholesaler to obtain personal medical information or be  
11 authorized to permit a wholesaler to have access to personal  
12 medical information except as otherwise authorized by Section 56  
13 and following of the Civil Code. For purposes of this section,  
14 “long-term care facility” shall have the same meaning given the  
15 term in Section 1418 of the Health and Safety Code.

16 SEC. 2. Section 11453 of the Health and Safety Code is  
17 repealed.

18 SEC. 3. Section 124960 of the Health and Safety Code is  
19 amended to read:

20 124960. The Legislature finds and declares all of the following:

21 (a) The state has a right and duty to control the illegal use of  
22 opiate drugs.

23 (b) Inadequate treatment of acute and chronic pain originating  
24 from cancer or noncancerous conditions is a significant health  
25 problem.

26 (c) For some patients, pain management is the single most  
27 important treatment a physician can provide.

28 (d) A patient suffering from pain or a condition causing pain,  
29 including, but not limited to, intractable pain should have access  
30 to proper treatment of his or her pain.

31 (e) Due to the complexity of their problems, many patients  
32 suffering from pain or a condition causing pain, including, but not  
33 limited to, intractable pain may require referral to a physician with  
34 expertise in the treatment of pain or a condition causing pain,  
35 including, but not limited to, intractable pain. In some cases, pain  
36 or a condition causing pain, including, but not limited to, intractable  
37 pain is best treated by a team of clinicians in order to address the  
38 associated physical, psychological, social, and vocational issues.

39 (f) In the hands of knowledgeable, ethical, and experienced pain  
40 management practitioners, opiates administered for ~~severe acute~~

1 ~~and~~ pain or a condition causing pain, including, but not limited to,  
2 intractable pain can be safe.

3 (g) Opiates can be an accepted treatment for patients in pain or  
4 a condition causing pain, including, but not limited to, intractable  
5 pain who have not obtained relief from any other means of  
6 treatment.

7 (h) A patient suffering from pain or a condition causing pain,  
8 including, but not limited to, intractable pain has the option to  
9 request or reject the use of any or all modalities to relieve his or  
10 her pain.

11 (i) A physician treating a patient who suffers from pain or a  
12 condition causing pain, including, but not limited to, intractable  
13 pain may prescribe a dosage deemed medically necessary to relieve  
14 pain as long as the prescribing is in conformance with ~~the~~  
15 ~~provisions of the California Intractable Pain Treatment Act, Section~~  
16 2241.5 of the Business and Professions Code.

17 (j) A patient who suffers from ~~severe chronic intractable pain~~  
18 *pain or a condition causing pain, including, but not limited to,*  
19 *intractable pain*, has the option to choose opiate medication for  
20 the treatment of the severe chronic intractable pain as long as the  
21 prescribing is in conformance with the provisions of Section 2241.5  
22 of the Business and Professions Code.

23 (k) The patient's physician may refuse to prescribe opiate  
24 medication for a patient who requests the treatment for pain or a  
25 condition causing pain, including, but not limited to, intractable  
26 pain. However, that physician shall ~~inform~~ *refer* the patient ~~that~~  
27 ~~there are to physicians who specialize in the treatment of pain treat~~  
28 *pain* or a condition causing pain, including, but not limited to,  
29 intractable pain with methods that include the use of opiates.

30 SEC. 4. Section 124961 of the Health and Safety Code is  
31 amended to read:

32 124961. Nothing in this section shall be construed to alter any  
33 of the provisions set forth in Section 2241.5 of the Business and  
34 Professions Code. This section shall be known as the Pain Patient's  
35 Bill of Rights.

36 (a) A patient suffering from pain or a condition causing pain,  
37 including, but not limited to, intractable pain has the option to  
38 request or reject the use of any or all modalities in order to relieve  
39 his or her pain.

1 (b) A patient who suffers from pain or a condition causing pain,  
2 including, but not limited to, intractable pain has the option to  
3 choose opiate medications to relieve that pain without first having  
4 to submit to an invasive medical procedure, which is defined as  
5 surgery, destruction of a nerve or other body tissue by  
6 manipulation, or the implantation of a drug delivery system or  
7 device, as long as the prescribing physician acts in conformance  
8 with the provisions of the California Intractable Pain Treatment  
9 Act, Section 2241.5 of the Business and Professions Code.

10 (c) The patient's physician may refuse to prescribe opiate  
11 medication for the patient who requests a treatment for pain or a  
12 condition causing pain, including, but not limited to, intractable  
13 pain. However, that physician shall refer the patient to physicians  
14 who treat pain and whose methods include the use of opiates.

15 (d) A physician who uses opiate therapy to relieve pain or a  
16 condition causing pain, including, but not limited to, intractable  
17 pain may prescribe a dosage deemed medically necessary to relieve  
18 the patient's pain, as long as that prescribing is in conformance  
19 with Section 2241.5 of the Business and Professions Code.

20 (e) A patient may voluntarily request that his or her physician  
21 provide an identifying notice of the prescription for purposes of  
22 emergency treatment or law enforcement identification.

23 (f) Nothing in this section shall do either of the following:

24 (1) Limit any reporting or disciplinary provisions applicable to  
25 licensed physicians and surgeons who violate prescribing practices  
26 or other provisions set forth in the Medical Practice Act, Chapter  
27 5 (commencing with Section 2000) of Division 2 of the Business  
28 and Professions Code, or the regulations adopted thereunder.

29 (2) Limit the applicability of any federal statute or federal  
30 regulation or any of the other statutes or regulations of this state  
31 that regulate dangerous drugs or controlled substances.